IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1766 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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MUSABHAI HASAMBHAI SANDHI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 1766 of 2002

MR YATIN SONI for Petitioner No. 1

MR SJ DAVE, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 30/04/2002

ORAL JUDGEMENT

The petitioner has been detained under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as `the Act of 1985') by the order dated 23-11-2001 passed by the Police Commissioner, Rajkot City and he has been declared as bootlegger.

2. It is now well settled that unless the activities of a person as bootlegger has disturbed the maintenance of public order, he cannot be detained under the Act. Reliance is placed on a decision of the case of Piyush Kantilal Mehta Vs. Commissioner of Police, Ahmedabad & Ors. reported in AIR 1989 SC 491.

3. Heard learned advocate for the petitioner and learned AGP for the State. It is submitted by learned advocate for the petitioner that the detention order has been passed on 23-11-2001 while actual date of detention is 6-1-2002 for which, detaining authority has relied upon two prohibition cases registered against the petitioner being Pradhymannagar Police Station, Rajkot City C.R.No.189/2001 dated 21-7-2001 and Prohibition Police Station, Rajkot City C.R.No.978/2001 dated 9-11-2001. It is further submitted that the authority had relied upon two statements of independent witnesses which have been recorded on 21-11-2001 and same were verified on 22-11-2001 and order has been passed on 23-11-2001. It is mainly argued by learned advocate for the petitioner that while passing the impugned order, it was made clear in the grounds of detention at page 14, para 5 (Annexure-C) that the detention order was passed by the authority in the year 1995 against the present petitioner and the order to that effect has been annexed for the knowledge of the petitioner, but same has not been taken into consideration by the authority while passing the detention order and hence, there is non-application of mind on the part of authority. He has taken me through the affidavit-in-reply dated 11-3-2002 filed by Shri Sudhir Sinha, I.G. Border Range, H.Qs., Kutch-Bhuj more particularly towards page 27, para 6 and page 28, para 7. It is categorically stated by the authority on oath in para 6, line 2 of the said affidavit that "I have referred to and relied upon the documents from pages 1 to 70 and all these documents have been submitted by the Sponsoring Authority". Again it is reiterated by the authority on page 7, para 7 that "Copies of all the documents from pages 1 to 70 which have been referred to and relied upon by me have been supplied to the detenu along with the grounds of detention". Showing the same, he has argued that it is a case of non-application of mind as at one stage (Annexure-C, page 14) the authority has categorically stated that he has not taken into consideration the above referred documents, but as such he has relied upon those documents in passing the impugned order of detention which reflects from the affidavit-in-reply filed by Shri Sudhir Sinha, I.G., order Range, H.Qs., Kutch-Bhuj and

hence, there is non-application of mind on the part of detaining authority in passing the impugned order of detention. In this connection, he has relied upon a decision of a Division Bench of this Court in the case of Dhanbai Jashabhai Miyana Vs. Commissioner of Police, Ahmedabad and Ors., 1989(1) G.L.R. p. 584 wherein it is held at head note as under:

"PREVENTIVE DETENTION--Gujarat Prevention of Anti-Social Activities Act, 1985 (XVI of 1985)--Sec.3--If an order is based on facts, which disclose half truth, say where a vital fact is nota considered by the detaining authority or it is not brought to his notice by the sponsoring authority, it reveals non-application of mind on the part of detaining authority--The order of detention is liable to be quashed."

5. In view of the above, since there is non-application on the part of the authority, the detention order is bad and same cannot be sustained and hence, same requires to be quashed and set aside.

6. The petition is allowed. The impugned order of detention dated 23-11-2001 passed against the detenu is hereby quashed and set aside. The detenu Musabhai Hasambhai Sandhi is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly with no order as to costs. Direct service is permitted.

(R.P.Dholakia,J.)

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